

PUBLIC HEARING
STATE OF CALIFORNIA
CALIFORNIA STATE AUDITOR
BUREAU OF STATE AUDITS

In the Matter of:)
)
Selection Process for the)
Citizens Redistricting Commission)
and the Applicant Review Panel in)
the Implementation of)
the Voters First Act)
-----)

DEPARTMENT OF HEALTH SERVICES
EAST END COMPLEX
1500 CAPITOL MALL
SACRAMENTO, CALIFORNIA

MONDAY, JANUARY 26, 2009
11:00 A.M.

ORIGINAL

A P P E A R A N C E SFOR THE STATE AUDITOR'S OFFICE

Sharon Reilly, Chief Council to the State Auditor

Margarita Fernandez, Chief of Public Affairs

Steven Russo, Chief of Investigations

Elaine M. Howle, California State Auditor

PUBLIC SPEAKERS

Charles T. Munger

Sam Smith - California Association of Health Underwriters

Trudy Schafer - League of Women Voters of California

Jeannine English - AARP

Kathay Feng, California Common Cause

David Cousins

James W. Wright

Zabrae Valentine - California Forward

Genevieve Clavreul

Kim Alexander - California Voter Foundation

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P R O C E E D I N G S

PANEL CHAIR REILLY: We can go ahead and get started. Can everybody hear me?

Good morning. On behalf of the California State Auditor, I would like to thank you for your participation in today's meeting regarding the implementation of the Voters First ACT. California voters approved this new law in November 2000.

With me today I have Steven Russo, who is our Chief of Investigations at the Bureau, and Margarita Fernandez, who is our Chief of Public Affairs. I'm Sharon Reilly, and I'm Chief Counsel to the California State Auditor. We also have various members of our Prop 11 team here, and they're listening in today.

As stated in the meeting notice, this meeting is to solicit comments regarding the processes that should be established for individuals to apply to become members of the Citizens Redistricting Commission and for the selection of an Applicant Review Panel to assess the applicants and create an applicant pool of 60 qualified members.

The comments received at this meeting may be considered as the State Auditor develops and establishes processes that are necessary to implement the Act. We are here to gather information from the public, not to engage

1 in debate of the law or to discuss the merits of the Act.
2 We may occasionally ask follow-up questions or ask you to
3 clarify your comments so that we may fully understand
4 them, but our primary purpose here today is to hear your
5 thoughts and concerns regarding the role the State Auditor
6 plays in the implementation of the Act.

7 We ask you to limit your comments to the
8 provisions of the Act relating to the formation of the
9 redistricting commission and the duties of the commission.
10 I know there's a lot of interesting questions about what
11 the commission is going to do when it's actually formed,
12 but that -- our role is limited to just the formation of
13 the commission, so that's what's relevant to our
14 rule-making process.

15 Once you have provided your comments, unless
16 you're interested in hearing comments from other
17 interested persons here today or would like to speak again
18 after everyone else has had a chance to comment, you
19 needn't worry that you'll miss something important if you
20 need to leave before we conclude.

21 Again, our intent today is to listen. After
22 taking comments from citizens throughout the state, we
23 will assess the need for regulations, and after drafting
24 them commence a formal comment period so you'll have
25 further opportunity to comment.

1 We intend to take a couple -- we may take a
2 couple of breaks depending on how lengthy the
3 conversations are. Based on the size of this room, I'm
4 thinking we might be able to get through this without any
5 break, but we'll see how it goes.

6 Also, if the State Auditor determines that
7 additional meetings are needed, future meetings may be
8 scheduled. If at any point we determine that it is
9 necessary because of the number of individuals wishing to
10 address the panel -- which it doesn't look like it's going
11 to be an issue today -- we may ask you to limit your
12 comments; but again, I don't think that's going to be an
13 issue for us today.

14 We are not taking comments in any particular
15 order. I'm thinking that probably the easiest way today
16 would be to go row by row.

17 Also, written comments may be sent to the address
18 on our hand-out. I think most of you got that when you
19 came in. If you have written comments that you would like
20 to submit today or if you have any questions regarding
21 where to send your written comments, please see the
22 representative from the State Auditor's Office at the back
23 of the auditorium. She's not there right there, but
24 she'll be right back.

25 Just to let you know, this meeting is being

1 recorded. We intend to make the recording available on
2 our website.

3 Before beginning your comments, we ask that you
4 state your name for the record. If you would like to be
5 added to our list of interested persons for any future
6 mailings regarding the State Auditor's implementation of
7 the Voters First Act, you may sign up at the back of the
8 auditorium before you leave today, however, doing so is
9 purely voluntary and is in no way a prerequisite to
10 addressing the panel. And also you can give us your
11 information through this the card on the inside that you
12 can tear out.

13 So with that, I think we can get started and
14 maybe start with this row right here.

15 MR. MUNGER: Good morning, Honorable
16 Representatives of the Bureau of State Audits. For the
17 record, my name is Charles Munger. I have a
18 recommendation to you which is, first, that you don't take
19 advice, generally speaking, from anyone who won't give
20 their advice in the public record. And I'm very deeply
21 cheered by the beginning of this public hearing. And you
22 also should take any advice from anyone who either
23 strongly supported or strongly opposed this provision with
24 a large grain of salt. I was the donor who made the
25 single largest individual contribution to the passage of

1 this initiative, and so you should get out the salt
2 because I'm obviously a very interested individual.

3 Before I go to my specific recommendations, I'd
4 just like to say that -- to have the Bureau of Audits bear
5 in mind the tremendous public trust that individuals like
6 me and voters have placed in the probity of the Auditor's
7 Office in entrusting you with setting up for the first
8 time the rules for an unprecedented act in California,
9 which is an independent redistricting commission.

10 The voters and people like me have brought
11 California redistricting reform if you can keep it, just
12 as Franklin said to someone who asked when he went to the
13 convention and came back, what did you bring us, well, we
14 brought you a republic if you can keep it. Actually,
15 you've been selected to keep it. And if redistricting
16 reform is to have a future, the uprightness and probity of
17 your actions are the things on which we'll all depend.

18 I have a several-page hand-out, which I've
19 already given to your people in the back, and there are
20 some copies which are available to members of the public
21 who maybe interested. I won't go through all of it
22 because time will not permit, I'll just hit the heads of
23 the business.

24 First of all, when you have your meetings of the
25 Auditor Review Panel, you should comply with the

1 Bagley-Keene Open Meeting Act. And it's not strictly
2 required by the proposition, but it's clearly in the
3 public interest and it's certainly within precedent with
4 the Act because that's how the citizens' review panel, the
5 redistricting panel conducts its business.

6 I strongly suggest that the panel members on that
7 commission not communicate or receive communications about
8 applicants or the composition of the applicant review pool
9 or matters related to the selection of the panel's pool of
10 recommended applicants from anyone outside either a public
11 hearing or as a public record. This is essential for
12 several reasons.

13 One is the public cannot come to you and say that
14 information given you is mistaken if they don't know what
15 information is given you.

16 Second problem is that a we would -- a game will
17 be played. The game is quite simple. If you imagine
18 you're the Auditor Review Panel, and we have a republican,
19 an independent and a democrat. Well, I want John not to
20 be on the panel. And so I'm going to go to the two of you
21 who I think are going to keep John off the panel. I'm
22 going to talk to you; I'm going to talk to you. And you
23 might argue for John, so I'm not going to talk to the
24 third person. When you make a motion that John comes on
25 the panel, the other two won't support it, motion dies

1 without a second. You will never know why it is that they
2 decided not to support John, the public will not know; but
3 in effect that game will be played.

4 What you want is a situation in which the
5 information that comes to you is made available to all
6 three of you, and that information is such that the public
7 can say I don't know what you just said about John, but
8 let me tell you, it's not true, or the reverse, that they
9 said John was wonderful, but let me tell you, this is a
10 problem with John's application that John did not see fit
11 to bring forward but we know about it. You want to keep
12 that even.

13 The second thing which is important for the
14 Auditor Review Panel is that this is the first time
15 anyone's done redistricting reform, it would be very much
16 the public interest if the pool of 60 went forward with a
17 unanimous vote from the three representations, republican,
18 democrat, independent. You can't guarantee that. It may
19 be that you will wind up with a 2-1 vote. But if you do,
20 I suggest you write a rule that says a pool can go forward
21 on a 2-1 vote, but it has to be -- you have to have two
22 meetings on it.

23 So the panel's divided 2-1, you have another
24 meeting, tempers cool, somebody proposes a compromise,
25 somebody sees if you can get a 3-0 vote, and if you can

1 get a 3-0 vote -- 3 -- the minute that pool goes forward,
2 you get a 2-1, have a cooling-off period, because it's
3 enormously in the public interest not to have, for
4 example, the republican, the democrat representing the
5 traditional parties vote a pool in over the objections of
6 the independent. That is not going to be a good precedent
7 for California, and you should slow down if you can avoid
8 it.

9 For the State Auditor, the responsibilities of
10 the State Auditor under the Act are actually rather broad.
11 The State Auditor can remove people for a list of causes,
12 and it's also rather inclusive. Again, the State Auditor
13 should not communicate with or receive communications
14 about applications or applicants from anyone outside
15 either a public meeting or on the public record. Let
16 people stand up and say what they want, but let us all see
17 what it is.

18 The State Auditor -- if the State Auditor is
19 going to remove someone, that person should be informed of
20 why it is that they have a conflict, and they should be
21 allowed to come to a public meeting and say, actually
22 either that's not true or that's really not a conflict.
23 And this will enormously help the perception that the
24 State Auditor is applying uniform standards to all the
25 applicants, because if the Auditor is going to deny Mary a

1 seat or chance at a seat for a reason, then somebody can
2 come up and say, but isn't that the same reason for this
3 other applicant that you've already put forward.

4 As long as you keep things completely in the
5 open, and this meeting is an admirable example of this,
6 the process will go forward. There will be those who may
7 advocate that is kind of unwieldy. As you can see today,
8 you can take testimony from people quite easily and you
9 can keep people informed.

10 And I myself have served on a state commission
11 which operated under the Bagley-Keene Open Meeting Act.
12 My commission advised the State Board of Education on the
13 instructions materials in the public schools. We gave
14 recommendations, which were -- which set education policy
15 in science and math for six or eight years in the
16 California public schools. And we allocated, in effect,
17 half a billion dollars. And we ran by the Bagley-Keene
18 Open Meeting Act. And the burden that your Applicant
19 Review Panel is taking on is not less than that. And if
20 we can do it with 55 publishers screaming at us about why
21 they want their books to be sold and every education
22 faction in California coming forward and saying why their
23 ideology on education should be represented in the final
24 list, you can do it here.

25 Actually, we found that, generally speaking, to

1 be sure there was public comment that wasn't useful, a lot
2 of it was. And you -- it would be a grave mistake to try
3 to handle these applications by meeting in a quiet office
4 somewhere and not involving the public to the fullest
5 possible degree.

6 Thank you very much. And again, my remarks are
7 on paper here; and if anyone from the public wishes to
8 look at them, I have some copies.

9 Thank you very much.

10 MR. SMITH: Good morning. I'm Sam Smith with the
11 California Association of Health Underwriters. And as
12 Mr. Munger said, what a refreshing day this is for
13 California to have the opportunity to be here and to bring
14 this process out into the public eye once again.

15 The one thing that we would like to ask you to
16 try and do through this process, in the initial stages of
17 the process, is to include the community-based
18 organizations on an early basis in soliciting the
19 applications when they come in, to let us help you go out
20 into the grassroots of California, on the streets, in the
21 communities, and in the businesses to reach those people
22 that normally would not be exposed to the process. It's
23 easy to be -- if you're in the initial political
24 infrastructure of California, you get the emails, you get
25 the notices, but to go that extra step and allow us to

1 participate in reaching out to those people that normally
2 wouldn't be a part of that process. Thank you.

3 PANEL CHAIR REILLY: I'd like to acknowledge that
4 the State Auditor is now here, Elaine Howle.

5 I think what we can do is start over with this
6 row, the second row and go across. Thank you.

7 MS. SCHAFER: Thank you. I'm Trudy Schafer. I'm
8 representing the League of Women Voters of California.
9 First I want to thank all of you for having this series of
10 interested persons meetings. As the speakers before me
11 said, the act of inviting and soliciting as much as
12 possible input from the public will make this process
13 much, much better than it could have been. And I would
14 like to say that that is probably the biggest single thing
15 that I think will ensure the success of the overall
16 working of the selection process and then of the
17 commission is that there be a very transparent process and
18 that it be extremely well-publicized, that there be
19 outreach to all segments of California's population.

20 Speaking just briefly about the selection
21 process, I think I would refer you to the statute, as you
22 know very well, that the application process is to be open
23 to all registered California voters in a manner that
24 promotes a diverse and qualified applicant pool. And that
25 is my stress for today; that, in fact, that outreach needs

1 to be to all the possible communities that you can reach
2 so that we can ensure that the number of people applying
3 is as great as possible, that they be qualified, and that
4 they be diverse so that as the pool is successively made
5 smaller and smaller, that that diversity can be, as well
6 as anything can be done, ensured.

7 We do note that as your outreach occurs, we
8 believe that you can help the process beyond the selection
9 by keeping records and keeping -- of those who have
10 applied or have inquired about applying and passing on the
11 possibility to them that they -- that you can ask if they
12 would like to be kept informed, that in the same way that
13 you're asking us today if we want to be on your mailing
14 list, I hope that you will keep that and then pass it on
15 so that it becomes part of the outreach to people who want
16 to follow the actual commission proceedings.

17 I think that the League became essentially a
18 fourth sponsor of the initiative, and like the proponents
19 who will also speak briefly, we are looking forward to
20 having a lot more to say both from our local leagues of
21 women voters as you go around the state and possibly have
22 more written comments in response to some of the questions
23 that we hear in this process and the other days.

24 Thank you.

25 PANEL CHAIR REILLY: Quick question. Do you have

1 any further thoughts on what "qualified" means for
2 purposes of the initiative?

3 MS. SCHAFER: "Qualified" was difficult I think
4 in the working out what was the best wording from -- as we
5 worked to try to have this as a Constitutional amendment
6 through the legislature and then as it went into the
7 initiative process. And at this point I would say that
8 the wording of the initiative is probably the best advice
9 to you. I think that you will be needing to work up an
10 application form and a set of criteria for the review
11 panel.

12 I did not say it, but in the application form
13 itself, I would suggest speaking to the conflict of
14 interest, that you simply -- have a very simple yes and no
15 so that on the affirmation of the people who are applying
16 you can cut through many of the questions and much of the
17 work that you'll have to do if you simply say about the
18 various conflicts, have you been appointed to, elected to
19 or been a candidate for a federal, state office within the
20 past ten years, have you done this, have you done that, so
21 that that will simplify your work considerably. Once you
22 get past that, then analytical skills, the ability to be
23 impartial.

24 The kinds of background that we think many, many
25 of the people apply will bring to a commission would

1 include people who are familiar with the civic process,
2 people who are familiar with the mapping process, and have
3 done this sort of thing either in a professional manner or
4 as community-active people. Those are the sorts of things
5 that I believe you will find, and I'm looking forward to
6 hearing more input from others about that question.

7 Thank you.

8 MS. ENGLISH: Good morning. I'm Jeannine
9 English, the State President of the AARP, one of the
10 proponents of the initiative, and thrilled to be here. We
11 never really were sure we were going to get here, and
12 pleased to be here and pleased to be working with you.

13 On behalf of our 3.4 million members, we're
14 really urging the same thing that Trudy was just talking
15 about, the broad outreach, the total transparency, and
16 really focusing on the diversity of all of the pools.

17 I think that, you know, with regard to the broad
18 outreach, one of the things that we are happy to do is
19 work with you on that. We do have access to our members;
20 we do have a way to reach them. And so we're happy to
21 work with you on that outreach in any way we can.

22 We will be submitting formal written comments to
23 you with specifics; and if you have specific questions
24 that you'd like us to focus on, we're happy to do that as
25 well.

1 But for the most part, you know, it's just making
2 sure -- our intent, all the proponents' intent was to make
3 sure we had broader outreach, we had full diversity. This
4 is the only, I think, initiative of its kind that speaks
5 to diversity in three different places in the law. I
6 don't think there's any other commission in the state that
7 does that. So it was definitely the intent of the
8 proponents to make sure that this commission reflects the
9 diversity of the state. And I think that that's the key
10 from our perspective; the transparency, the openness, and
11 the diversity.

12 And so any way we can work with you on that to
13 help you get the message out, to respond to specific
14 questions about the initiative itself, we're happy to do
15 that.

16 MS. FENG: Good morning. I want to join the
17 League of Women Voters and AARP and our good friends from
18 CAHU and Charlie Munger in saying that we are absolutely
19 thrilled that the State Auditor's Office has taken the
20 general instructions from Proposition 11 and really
21 embraced this notion that you're going to have hearings
22 early, often, and really want to solicit the input from
23 the public. I think that that's definitely the spirit and
24 character that we had intended Proposition 11 to be held
25 in. And I think we were all pleasantly surprised that

1 without a whole lot of consultation or prodding, the State
2 Auditor initiated this process so early in the year. And
3 I think that that's going to be important.

4 One of the things that we didn't talk about is
5 that in the initiative it specifies a series of deadlines.
6 And I think one of the first ones is to have by
7 January 1st of 2000- -- what will end up being the year
8 2010, to start the process, but that's a deadline that's
9 recommended, and certainly the process can start a lot
10 earlier.

11 So one of the simplest things, of course, is
12 to -- in doing all the outreach around the selection
13 process and how to set it up, to create a parallel list of
14 people who express I'm interested in applying or I'm
15 interested in finding out more. And even though they may
16 not quite have relevant comments at this point in your
17 decision making, to have a way of putting that list of
18 names into an email or some other way of contacting them.

19 The other piece is that as we move forward and
20 once the commission is selected, we have to think about
21 transition. So trying to create an easy database of
22 people who have expressed interest, and maybe they're not
23 yet interested in applying to be on the commission, but
24 they are interested in providing testimony about where
25 their communities are and how the line should be drawn and

1 having this database created so that that can quite
2 quickly and easily be handed over to the commission once
3 it's created and they don't have to start from scratch.

4 I came up today to speak to pieces of the
5 selection process, and I think a lot of it is laid out in
6 the text of Proposition 11, but we had a tug of war as we
7 were drafting the language because one of the key things
8 was that while you do want to have some level of
9 specificity, you also don't want to load the constitution
10 up with so much detail that you've -- you've made it too
11 dense with arcane information and also you make it too
12 inflexible to respond to changing demographics or changing
13 situations for years to come. And since this is hopefully
14 a process that will stay effective not just in 2011, but
15 2021 and 2031 and so on, we wanted to have some room to
16 grow.

17 So some of the things that I think came up during
18 the campaign that were questions, we just wanted to speak
19 to in terms of what was in our minds, and hopefully that
20 will help shape the direction you go in.

21 The first is with this question of diversity.
22 There was some amount of, I guess, criticism that there
23 were not enough protections or specificity about how you
24 would define diversity or how you'd go about achieving
25 that. And we wanted to be respectful of the fact that our

1 state law is now, and federal laws, say that you can't
2 specify quotas, but at the same time we wanted to give
3 direction.

4 So in the initiative there's actually three
5 places that this topic comes up in terms of the selection.
6 The first is in 8252 Section (a)(1) it talks about
7 initiating a process, an application process that's open
8 to all California registered voters in a manner that
9 promotes a diverse and qualified applicant pool. And I
10 think we would interpret that in two ways. One is that as
11 you do your outreach and you are letting prospective or
12 potential categories of people know that they can apply,
13 that we really think about how to make sure that we are
14 reaching the breadth and diversity of California's
15 population. But that also is a general prescriptive that
16 through the entire application process, even when it's
17 unspoken, that we try to allow that representation of
18 diversity be infused through the selection process. And
19 I'll point out some places where it's not specified, but I
20 think it would be worth it to think about creating some
21 instructions that give a little bit more direction.

22 The second place that it appears is 8252(d). And
23 here we talk about the first stage. So you've got all
24 these people who have applied, and you now have a group of
25 three state auditors who have culled through, you've

1 removed the people who have conflicts, and you're looking
2 for people who are the most qualified. And we instruct
3 that you're narrowing that pool down to your 60
4 applicants, which would be defined in part by creating
5 pools of partisan representation, but also in part looking
6 for people who have the relevant analytical skills,
7 impartiality, and who represent our state's diversity in
8 terms of demographics and geography.

9 Now, that little phrase, there's a little tail
10 end that says an appreciation for California's diverse
11 demographics and geography, and we meant that appreciation
12 to be the State Auditor's appreciation for that as you're
13 putting together the pool to create something that's
14 diverse. Anyways, I'm not sure if you were following some
15 of the arguments back and forth, but our intent was to
16 indicate that diversity should be the third prong of what
17 you're thinking about as you're pulling together that pool
18 of 60.

19 One of the areas that's unspoken is when then
20 that pool of 60 is given to the legislative leaders and
21 they can essentially do their jury voir dire and strike
22 names, one of the things that we were a little bit
23 concerned about was that there might, either through
24 conscious or unconscious result, end up with a pool that's
25 significantly less diverse than what they were handed. So

1 in other words, in doing their strikes, somehow their
2 strikes end up removing everybody from Fresno or racial or
3 ethnic diversity, or they remove all the women. And so I
4 think that there should be some instruction to the
5 legislature that as they put together the list of people
6 that they strike, that they also be conscious of trying to
7 keep to the overall principle of creating pools that are
8 reflective of the state.

9 Then the last place that it's actually specified
10 in the initiative, you have eight people who are randomly
11 chosen and then six people who are specifically chosen by
12 their fellow commissioners, and those last six are to be
13 chosen in a way to ensure that the commission's
14 composition ensures the state's diversity. And here we
15 actually give a definition; ethnic, geographic, gender,
16 and racial, but not limited to that.

17 And so one of the concerns that was brought up by
18 a colleague was what if in randomly choosing the people
19 who are going to be in the pool of individuals not
20 affiliated with the two major parties you end up with two
21 people who are from minor parties and nobody who is
22 declined the state. That could be one example of an
23 additional category of diversity that you would think
24 about to try to make sure that the people who end up
25 falling into that category of people who are not in the

1 two major parties actually reflects the diversity within
2 that, if that makes sense.

3 So I just wanted to make sure that we put that on
4 the record, because I think that one of our key things in
5 making sure that this commission ultimately is responsive
6 to the testimony that people bring forward to it, is also
7 that as they sit and take that testimony, that people
8 imbue it with a sense of trust that this commission will
9 reflect California, and I think that starts with making
10 sure that the group is fairly diverse.

11 You asked a question about qualifications. And I
12 know a colleague of mine from California Forward is going
13 to be speaking to some of the research that we put into
14 that. We had put together a document that thought about
15 categories of people who would be uniquely qualified for
16 this commission. And I'm hoping that Zabrae Valentine
17 from California Forward brought that document with her.
18 And she's looking at me blankly, but I'm sure she did.

19 But just some of the categories that we were
20 thinking of, particularly to think about outreaching to,
21 even with this set of hearings, include local
22 redistricting commission members. So in several cities up
23 and down the state and other jurisdictions they have local
24 redistricting commissions, and I think both to bring them
25 in as potentially applicants for the commission but also

1 to hear from them in terms of how they set up their
2 selection process. San Diego is an interesting one
3 because their commission is appointed first round by a
4 judge. And so seeing if we can contact some of the
5 individuals who are involved in that selection process to
6 give feedback. We looked at other states. And so we are
7 not the first by any means to have a redistricting
8 commission, and to the extent possible to extend the
9 invitation to Arizona and some other states to provide to
10 us their application but also how they went about doing
11 outreach and who they were looking at when they were
12 thinking about qualifications.

13 We'd love to see individuals who have voting
14 rights background, and that could be, you know, both from
15 the community and representing constituencies that have
16 appeared before previous redistricting rounds, but also
17 the Department of Justice and people internally within
18 government who have a lot of experience in voting rights.
19 We have a lot of folks who have experience in urban and
20 regional planning. So again, drawing from ranks from the
21 local level but also people who may come from academia.

22 We were thinking about, when we wrote this
23 phrase, "skills that with relevant analytical capacity,"
24 we were actually thinking about not just knowledge set but
25 also skill sets. So for instance, there may be people who

1 serve on local planning commissions who are fantastic at
2 facilitating a meeting and very good about thinking about
3 how to keep the process open.

4 So you could imagine that even if somebody wasn't
5 specifically -- they'd never done redistricting before but
6 had quite a bit of experience on a local commission where
7 they had served as chair and were facilitating and had
8 received, you know, lots of commendations on being able to
9 manage a lot of information coming in and figuring out
10 ways to adjust that and then throughput it to the public,
11 that that would be a skill set that would be relevant.

12 And then just lastly, people who have demographic
13 or G.I.S. experience. So there's a growing field of
14 people who work with the demographic data and lay it out
15 into a mapping software, but that's something that could
16 be relevant.

17 In California it just so happens that we a huge
18 repository of people who are considered to be expert in
19 their fields, in not just the general area of
20 constitutional law but specifically within voting rights
21 with an expertise on redistricting. We have, for
22 instance, Pam Carlin, who's considered to be, you know,
23 the expert in redistricting, who teaches at Stanford
24 University. And I suspect that even just going through
25 previous hearings, because we had three years of

1 negotiations with the legislature, there were a lot of
2 people who testified before the legislature would who be a
3 fairly easy list to cull through and add them to the
4 potential list of interested persons.

5 Lastly, I just want to say we talked a little bit
6 about making sure there is transparency in developing the
7 rules, and we would just suggest that as you are shaping
8 those proposed rules that you think about posting those on
9 the web as soon as possible. And so even before they
10 become cemented and decided, that the public has a chance
11 to kind of see the direction that you're going in and
12 provide input. There is -- and that same request would
13 apply to potentially posting the names of applicants as
14 they get narrowed down to the list of 60 and so on.

15 Thank you so much.

16 PANEL CHAIR REILLY: Is there anybody -- do you
17 have a question?

18 Is there anybody else in row two who would like
19 to comment? Okay, thank you.

20 MR. COUSINS: Good morning. Thank you for the
21 opportunity to comment on the process for selecting
22 members of the auditor review panel.

23 As I understand it, part of your effort today is
24 to develop criteria or receive criteria to make decisions
25 on the staff who will be making the selection of the

1 review committee, and so I appreciate the opportunity to
2 make what I think are sort of nuts and bolts selection.
3 And I learned from my legal background, it's sometimes
4 important to state the obvious so it gets into the public
5 record and it's just out for further comment.

6 PANEL CHAIR REILLY: Could you state your name
7 again and your organization.

8 MR. COUSINS: I'd be happy to. I'm David
9 Cousins. And I'm not representing any organization.

10 PANEL CHAIR REILLY: Thank you.

11 MR. COUSINS: I'm a professional in both the
12 private sector and public sector experience, and I've
13 signed up to receive your future mailings. And thank you
14 for reminding me to state my name, spelled C-o-u-s-i-n-s.

15 I am familiar with the selection of professional
16 staff in state agencies as well as other government
17 agencies. So as I mentioned earlier, I think the key is
18 to have objective criteria to select the people who will
19 be serving on the panel and the commission.

20 I would just ask that you propose a written
21 criteria for selection, post them on the website, that's
22 already been mentioned. We all know how important the
23 internet is to communicate with people, and through public
24 libraries or other access, you can really make this a
25 process that is truly open to the public and truly

1 transparent.

2 My other suggestion is to have written criteria
3 for selection and publish those.

4 Third, have a ranking system that's more
5 objective than less objective. I've used matrices or
6 numbers applied to various criteria, but it's almost
7 impossible to even have an objective procedure when
8 subjective means are used to make it. That's an issue I
9 present today, and perhaps other people can address that
10 in future hearings.

11 And my last comment related to diversity would be
12 that you balance the ultimate commission members between
13 professions and trades. And I realize it's important to
14 have people familiar with facilitating and the political
15 process, but I'd really like to see the average voter or
16 average citizen in California, "average" meaning someone
17 not fully engaged in the political process, and that would
18 include professional people, trades people, business
19 people and those not presently employed outside the home,
20 which would include homemakers and retirees.

21 And that concludes my comments. I would like to
22 provide you with written comments at a later date to
23 solidify and clarify what I've said. Thank you.

24 PANEL CHAIR REILLY: So now we're ready to take
25 comments from row three. Is there anybody in row three

1 who would like to comment? Thank you.

2 MR. WRIGHT: Good morning, Sharon. I'm James
3 Wright, I'm a voter from San Jose. And we who would
4 aspire to become members of the commission would probably
5 find it useful to understand a bit more of the time that
6 would be required of us in order to be participants. The
7 overall schedule for completion, of course, is clear
8 within the proposition itself, but the extent of an
9 individual's participation is certainly not. I do
10 understand that it's very early in the planning process
11 and that the staff, which the commission may hire, would
12 do much of the research and probably a lot of the
13 preparation of materials to distribute to the public and
14 so on.

15 So as early and as best as you can, would you
16 please estimate how many hearings and meetings there will
17 likely be, where in the state they may be held, and
18 perhaps their duration. This would be good, would help
19 planning for anybody, particularly somebody who's working.
20 I'm retired; it doesn't matter.

21 One possible source for such an estimate may
22 possibly be the history of prior redistricting efforts. I
23 realize they were done in a different way, but that would
24 maybe give you a clue as to what might be entailed. Thank
25 you very much.

1 PANEL CHAIR REILLY: Anyone else in row three?

2 MS. VALENTINE: Hi. I'm Zabrae Valentine with
3 California Forward. And I thought I would jump up since
4 Kathay suggested that I would.

5 And we've forwarded to your office and can make
6 available more widely some -- a brief analysis that we did
7 a few months ago about the kinds of people who would
8 potentially be qualified to serve on the commission.

9 But really what I wanted to do was thank the
10 State Auditor's Office sincerely for moving so quickly on
11 this. It's going to be a complicated process, I think
12 everyone understands that, and we really appreciate the
13 signal that you're sending by moving so quickly to start
14 soliciting input from anyone who wants to be participating
15 in this discussion.

16 You know, we also believe that the integrity of
17 your office is widely respected and we have tremendous
18 confidence in your capacity to do this well and your
19 commitment to doing it well in all of the conversations
20 that we've had with you. So thank you very much.

21 I also just wanted to say briefly that California
22 Forward was a strong supporter of redistricting reform.
23 We believe that this is a great proposal and that if
24 implemented as intended it will produce districts that
25 have a lot of integrity and that are drawn with the

1 interest of voters put first.

2 We also, however, take very seriously the
3 concerns that have been raised by some of the groups who
4 oppose the measure, specifically some of the minority
5 voting rights groups, and we will personally -- our
6 organization will work very hard to address their concerns
7 with everyone else who I know is interested in doing the
8 same thing so that we ultimately have a commission that's
9 diverse and that can produce districts that voters feel
10 good about across the state no matter what their
11 background is or where they live.

12 And lastly, I'll just say that we will be doing
13 whatever we can to support the process. We will --
14 including trying to identify individuals with expertise
15 that's relevant to this who can submit written testimony
16 to you as you collect information on how best to move
17 forward, or attend and testify in some of your future
18 hearings. Thank you very much.

19 PANEL CHAIR REILLY: This lady here would like to
20 testify.

21 MS. CLAVREUL: Since I'm mobile, I could go to
22 any row; I decided to be on this one. My name is
23 Dr. Genevieve Clavreul.

24 I'm always scared when I hear the word
25 "diversity" thrown up all the time, all the time versus

1 "qualification." And I think, you know, I think
2 qualification is very important, probably more important
3 than anything.

4 Also, you mentioned that you don't have to give
5 your name to testify, but you violated the Brown Act,
6 because as we enter the building, we have to sign our name
7 in. Just for your information. I'm an expert in the
8 Brown Act; you violated it.

9 I was very involved with the redistricting
10 proposal, so I'm very much in favor of it and would like
11 to be involved in the process. And I'm very glad you're
12 having multiple public hearings. And I will money to
13 every one of them probably. And but I think what bothered
14 me, what I heard so far this morning, first of all, is the
15 wait too long in testifying. I think, you know, two or
16 three minutes you can get your piece and you can send the
17 document in. But it is the same rhetoric I'm hearing
18 already.

19 And, you know, I'm not here to be nice to you
20 and, you know, revere you and so on; it's your job to do
21 the right thing. And I'm reading too much of that. You
22 know -- well, I would use a term that would not be polite
23 in public. Thank you so much.

24 PANEL CHAIR REILLY: Thank you.

25 Was there anybody else left in row three who

1 would like to testify or make comments?

2 Why don't we move on to row four. Thank you.

3 MS. ALEXANDER: Good morning. My name is Kim
4 Alexander. I'm President of the California Voter
5 Foundation. We're a nonprofit, nonpartisan organization
6 advancing the responsible use of technology to improve the
7 democratic process, and we're online at CalVoter.org.

8 We have on our website as part of our mission,
9 we've been working on providing districts maps to
10 California voters and have done so for the past 15 years.
11 So you will find on our site a section called "The
12 California Map Series" that has pdf maps that are
13 available for the public of all the political districts in
14 California. And we also have maps from 1991 that we
15 created in collaboration with UC Berkley's Institute for
16 Governmental Studies, which provides a nice contrast
17 between maps drawn by an independent panel of judges and
18 maps drawn by the legislature. The 1991 maps are nicely
19 nested and the 2001 maps, as we know, are not.

20 I have comments on six areas for you today. One
21 is the Applicant Review Panel. Two is the commission
22 application process. Three is the topic of random
23 selection. Four is on transparency and public access.
24 And I will try to not repeat comments made earlier. Five
25 is funding. And six is independent voters.

1 So first on the Applicant Review Panel, as has
2 been mentioned, the State Auditor got this job in Prop 11
3 because you are seen as a trustworthy agency. And I'm
4 sure there are people who are in your office who will
5 enjoy being open and transparent in carrying out their
6 duties relating to the Voters First Act. And this meeting
7 is a great example of your commitment to the open and
8 transparent nature of the Act itself.

9 Some measures you might take to further win over
10 the public's trust in your activities are to set up
11 accountability mechanisms that will insulate the Applicant
12 Review Panel from any potential accusations of bias;
13 number two is to publish the panel's credentials and bios
14 online; three is have a review panel take an oath. This
15 is election-related work that you are doing, and it is not
16 unprecedented to require key figures, such as poll
17 workers, to take an oath. And I'm going to provide you
18 with written comments as well, just to let you know. And
19 four is to possibly designate an ombudsman inside the
20 State Auditor's Office where concerned citizens can
21 register complaints.

22 On the topic of the commission application
23 process itself, number one, we would suggest, of course,
24 to make it easy for people to apply. We want the most
25 qualified people to serve, and they're going to need to be

1 able to make an informed decision as to whether they can
2 make the commitment and whether they are qualified to be
3 on the commission. So you don't want to waste anybody's
4 time.

5 So to that end, you can put on your new web page
6 that you recently added to your site, and thank you for
7 that, what are the -- what would qualify and what would
8 disqualify somebody from being on the commission, and put
9 that up as soon as possible.

10 I know it's in the initiative, but the initiative
11 itself is not that easy to read. It's only available
12 online currently as a pdf file in the Secretary of State's
13 Voter Information Guide in tiny print in italics. And I
14 know many people are reading this around the room as I am.
15 It looks like this, and it's not fun. So it would be
16 great if the State Auditor's Office could put up the
17 official text of the measure that everybody knows is a
18 reliable source. And then to state plainly and clearly
19 what the criteria is for the applicants and what would
20 qualify and disqualify somebody.

21 There are also restrictions to the commissioners
22 after they're appointed; a restriction on running for
23 office or holding -- working for the state down the line,
24 so that also needs to be part of the criteria that's
25 published online.

1 I would also encourage you to consider an online
2 application process using something like Survey Monkey.
3 There may be some other tools that are already in use in
4 other state agencies or in your own office. But that kind
5 of process will greatly help the public easily apply and
6 also for you to manage the applications themselves.

7 I would encourage you to consider making the
8 applications public online so that everybody can see who's
9 applied and what they've said. Of course I would urge you
10 to redact sensitive information, such as people's home
11 addresses or phone numbers, maybe we shouldn't display
12 that online, but at least the answers to questions that
13 people provide. And, of course, inform applicants ahead
14 of time that their application will be published if you do
15 in fact publish their application.

16 I would also like to know, it's not clear to me
17 from reading Prop 11, whether commission members will be
18 required to file statements of economic interest or not;
19 and if they are, that should be provided ahead of time as
20 part of the criteria and the job application, so people
21 know whether they have to report their personal financial
22 interests if they choose to serve.

23 The form itself will need to cover specific
24 questions of whether the applicants are qualified or not,
25 and it should also cover the criteria for selection as set

1 forth in Prop 11. This was discussed by some previous
2 speakers, but your job is to review the panel, narrow the
3 pool to 60 applicants, and that would be based on their
4 analytical skills their impartiality and appreciation of
5 California's diversity. So the application process must
6 provide the review panel with the information that you
7 need to help assess the applicant's abilities in these
8 three areas: impartiality, analytical skill, and
9 appreciation of California's diversity.

10 And you also might want to gauge the applicant's
11 familiarity with the Act itself and their familiarity with
12 the redistricting process. And people with planning
13 backgrounds may also be exceptionally qualified. You
14 might consider putting the application in draft format
15 ahead of time and allow public viewing and public comment,
16 similar to how the Voter Information Guide is produced so
17 that it's not -- there's a chance for people, if they're
18 unhappy with something that you devised in the application
19 process, that you have a chance to revise that.

20 Moving on to the topic of random selection,
21 another election-related process that calls for random
22 selection is the random selection of precincts whose
23 ballots must be tallied by hand to verify the accuracy of
24 computer vote counts. This is called The Manual Count
25 Law, and it's been around since 1965. And there's been

1 much debate within the election community over the past
2 five years or so regarding what methods are considered to
3 be the most random and verifiable for selecting this one
4 percent of the precincts.

5 There's been research just recently by computer
6 science and public policy experts at UC Berkeley that has
7 concluded that using a ten-sided dice is the easiest and
8 most transparent method for selecting the manual tally
9 precincts. The State Auditor's Office may also find that
10 that kind of method may work best for your random
11 selection process as well. I would highly you not use
12 software to make random selection because it's considered
13 by many to be the least transparent.

14 Some counties employ webcams so the public can
15 watch the selection process online; and that might be
16 another way that you can make sure that the selection
17 process is publicly transparent and verifiable. Pulling
18 names or numbers out of a hat is not such a good method,
19 although it sounds like one, because it's not easy to
20 verify that every possible number is in the hat in the
21 first place.

22 So this is the learning experience we've had
23 dealing with random selection in the election world, and I
24 hope some of these lessons might be valuable for you in
25 your duties.

1 The next topic I want to talk to is the issue of
2 transparency and public access in the process. I urge
3 you, as you are already are doing here, to establish a
4 standard for transparency and ease of public access early
5 on in this process.

6 The Voters First Act calls for the commission to
7 conduct an open and transparent process enabling full
8 consideration of and comment on the drawing of district
9 lines. And that's not your job, but what you do here will
10 greatly influence how and set a precedent for how this
11 whole process will unfold down the line.

12 The application process can embrace these
13 objectives. And some of the ways that you can do this is,
14 as I mentioned earlier, is to put more information up on
15 the State Auditor's web page. You might consider adding
16 the graphs and flow charts that are included in the
17 legislative analyst's excellent analysis in the Prop 11
18 section of the ballot pamphlet. And this will also help
19 with the application process, because there is a nice
20 chart there that shows how the pool gets narrowed. You
21 might consider providing links to our maps on our website.
22 And I'm happy to provide you with those URLs. And a
23 timeline for the development of the commission would be
24 helpful to have up online. And as I mentioned earlier,
25 the text itself in plain language, not underlined or

1 italicized or in eight-point font.

2 I'd also encourage you to consider providing
3 parking suggestions for the public meetings. This is a
4 very difficult area to find parking, and that's true at a
5 lot of state office buildings where I presume the rest of
6 the meetings will go on during this process. So maybe you
7 can check with the local people in those offices where
8 they would suggest people can find affordable parking.

9 The next topic to mention is funding. I would
10 encourage the State Auditor to figure out how much funding
11 the State Auditor's Office will need to do its job in this
12 process in the most open and transparent way possible.
13 Webcasting costs money, for example. And then ask for
14 that. I mean, Prop 11 specifies that the Governor is
15 going to have put something in his budget to meet the
16 needs of your agency to fulfill your duties for this job;
17 and he's very supportive of this.

18 So again, if we can set a good precedence for
19 transparency and openness early on through using new
20 technology, the web, that would be great, but those things
21 are going to cost money. So I hope you flesh that all out
22 and ask for what you really feel you're going to need to
23 be as open and transparent as we can.

24 The last comment I want to make is regarding the
25 role of the independent voters. And Kathay Feng, who

1 spoke earlier, mentioned this. There is a bit of a
2 contradiction in the text of the initiative between the
3 purpose of the initiative and the implementation of the
4 initiative.

5 In the purpose of the initiative it says that one
6 of the goals is to give independent voters a voice and to,
7 quote, "ensure full participation of independent voters."
8 But the way that the implementation is drafted, the
9 category, the four slots that are meant for people who are
10 not with the democratic or republican party, are open to
11 people who are with minor party -- registered with minor
12 parties as well. And given that the language in Prop 11
13 itself says that the goal is to give a voice for
14 independent voters, I hope that the State Auditor can do
15 something to ensure that one way or another at least one
16 or two of the people who end up in that pool of four in
17 that non-democrat/republican slot will actually be
18 independent voters, who are, after all, 20 percent of the
19 state's registered voters.

20 In conclusion I'd like to say that we applaud the
21 State Auditor for moving so quickly to establish these
22 regulations, which will be forthcoming, and to get this
23 process going, and we're happy to help in any way we can.
24 And I will provide written comments later on. Thank you.

25 PANEL CHAIR REILLY: We're still on row four. Is

1 there anybody else in row four that would like to provide
2 comments? Row five? Anyone in row six? The next row
3 after that? Is there anybody else who wants to provide
4 comment? No? Well --

5 (Ms. Feng speaking beyond range of microphone.)

6 MS. FENG: -- is from the Institute of
7 Governmental Studies and really should give us some
8 background on experience that you've had with
9 redistricting commissions.

10 There were two things that -- Kathay Feng with
11 California Common Cause. I'm the executive director. And
12 I think that there were two questions that were brought up
13 that just based on our discussions about how this might
14 work, we had some insights into. One was the application
15 process itself. So Kim Alexander asked, how could you
16 make this as easy as possible for people to assess whether
17 it's worth it for me to go through the entire application
18 process and to be considered, but then also for you to be
19 able to process that information.

20 And as you read the initiative, you can see that
21 there's a moderate list of conflicts of interest that
22 people would have to go through to make sure they don't
23 have in order to qualify. And then there's additionally
24 the prospective list that you're going to be developing of
25 what might be qualifications for serving on the

1 commission.

2 We thought about -- the Arizona commissions
3 process does this. It has a form where there's
4 essentially some blanks that you're filling in and a
5 checklist of things that you would go through. And we
6 were thinking about the form that people oftentimes get
7 when they're being asked to apply for jury service, or
8 you've been chosen to submit your name for jury service.
9 And there's a list of yes/no questions. And just in going
10 through that list of yes/no questions, you could then find
11 out, am I conflicted out, and would I then just drop out
12 as a result.

13 We did think that there's a first level then that
14 would make it easy for people to verify whether they are
15 obviously conflicted out, based on the responses to the
16 yes/no questions, and that's a self-verification process;
17 however, we do think that at a stage before you get to the
18 final selection of 60, that there should be an additional
19 verification that what somebody has said in terms of not
20 being conflicted out is actually true.

21 So that could be kind of working with other
22 agencies like the FPPC, Fair Political Practices
23 Commission, or other sources of public information to find
24 out -- to make sure that if somebody has asserted that
25 they are not currently on staff for a legislator, you

1 know, that's generally true, or that they haven't donated
2 \$2,000 to a particular candidate.

3 And I'm just trying to remember, there was one
4 other question that had come up that we had some thoughts
5 about. I think I'll leave it at that and submit written
6 comments at a later point.

7 PANEL CHAIR REILLY: Any comments? No? So I
8 think with that, as we said in the meeting, the hearing
9 notice, that we will adjourn. And if you know of anybody
10 who wasn't able to be here, please encourage them to
11 attend one of our other meetings throughout the state or
12 to provide us written comments.

13 Thank you very much, everybody, for coming today.

14 Just one moment. Elaine Howle, the State
15 Auditor, would like to make a few comments.

16 STATE AUDITOR HOWLE: I just wanted to thank all
17 of you for taking the time out of your day to participate
18 in this meeting either by providing comments or just
19 observing. We look forward to any written comments that
20 anyone would like to provide.

21 Our commitment to this process is open,
22 transparent, exercising due diligence so that this Voters
23 First Act is implemented in the best way and in the best
24 interest of the voters of the State of California.

25 So I want to personally thank all of you for

1 being here and participating thus far in the process. It
2 is very early in the process, but we are going to exercise
3 due diligence, and the best process is going to be a
4 process where we hear from the voters, we hear from the
5 public, because we take this responsibility very seriously
6 and want to do the best job we can for California.

7 So, again, thank you for taking the time out of
8 your day to be at this first meeting, and we look forward
9 to seeing you at future meetings. Thank you very much.

10 (Thereupon, the January 26, 2009,
11 California Bureau of State Audits
12 Public Hearing was adjourned.)

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CERTIFICATE OF TRANSCRIBER

Title: In the Matter of the Public Hearing of the
California Bureau of State Audits

Date: January 26, 2009

I hereby certify that the foregoing is a correct transcript from the digitally-recorded hearing of the above-referenced matter for the California Bureau of State Audits, to the best of my ability.


Diana Sasseen